

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.115 OF 2007

WITH

CIVIL APPLICATION NO.303 OF 2007

In

SECOND APPEAL NO.115 OF 2007

Shri Dattatraya Sadashiv Nage,
deceased through L.Rs.

a) Smt.Laxmibai Dattatraya Nage & Ors. : Petitioners
(Orig.Deft.Nos.1 & 2)

V/s.

Shri Parisa Sadashiv Nage & Ors. : Respondents
(No.1-Orig.Pltf. and
Nos.2 to 12-Orig.Deft.
nos.3 to 13)

Mr.S.S.Patwardhan for the petitioners.
Mr.S.G.Deshmukh for respondent no.1.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 28, 2007.

P.C.

1. This is a Second Appeal preferred against the judgement and decree passed by the lower appellate Court in an appeal against the judgement and decree passed by the trial Court in a suit filed for partition and separate possession of a joint family property in favour of the respondent no.1.

2. According to Mr.Patwardhan, the learned counsel for the appellants, the Courts below failed to appreciate that

the respondent no.1 has not proved exclusion within a period of 12 years in respect of all the properties. There is no merit in this contention at this stage since the Courts below have found that the respondent no.1 was in possession of one of the suit properties and, in any case, there appears to be no evidence of exclusion at any point of time. As noted earlier, the respondent no.1 has been found to be in possession of a part of the ancestral property.

3. Hence, no substantial question of law arises. The Second Appeal is dismissed.

4. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same stands disposed of.

S.A. BOBDE, J.